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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL HOWLETT,

Defendant and Appellant.

B207855

(Los Angeles County
Super. Ct. No. TA093355)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jerry E. Johnson, Judge. Affirmed.

Lea Rappaport Geller, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Michael Howlett appeals from a judgment of conviction following a jury trial. The jury found defendant guilty of possessing phencyclidine for sale (Health & Saf. Code, § 11378.5).¹ The trial court found true the allegation that defendant previously had been convicted of two offenses within the meaning of Health and Safety Code section 11370.2, subdivision (b). Defendant was sentenced to 10 years in state prison, the mid-term of four years for possessing phencyclidine for sale, plus two 3-year enhancements for each prior conviction.

On appeal, defendant claims error in the prosecutor's use of a peremptory challenge to remove a Black prospective juror. We affirm.

FACTS

Prosecution Evidence

On October 12, 2007, Los Angeles Police Detective Michael Owens was conducting narcotics surveillance at 10333 Anzac Avenue. Defendant's mother lived next door at 10321 Anzac Avenue. Detective Owens saw an individual identified as Michael Woods (Woods) drive up in a Ford F150 and get out of the truck. He approached defendant. After a brief conversation, Woods walked up to Lamont Wilson (Wilson), who was at a table on the sidewalk in front of 10321 Anzac Avenue. Woods spoke briefly with Wilson, went back to his truck, and then walked back to the table and handed Wilson some money.

Wilson walked over to the yard at 10333 Anzac Street and walked to the side of the house. He bent down and picked something up from a dirt area. He returned and handed Woods a small vial of the type often used to store phencyclidine (PCP).

¹ Lamont Wilson and Carlton Deon Howlett were also charged. They are not parties to this appeal.

After Woods went back to his vehicle, he opened the cover to the gas cap and placed a vial there. Wilson and defendant sat down at the table, along with Carlton Howlett (Howlett).

While Woods and Wilson were involved in their transaction, Detective Owens saw a man on a bicycle ride up to Howlett and hand him money. Howlett walked over to a red Chevy Suburban parked on the street, sat in the car for a few seconds and then returned to the table. Detective Owens formed the opinion that Howlett might be selling narcotics.

Los Angeles Police Officer Pete Cabral was directed to stop the Ford F150. He did so and found a vial inside the gas cap cover, emitting an odor consistent with PCP.

Los Angeles Police Officer Raquel Cruz searched the yard at 10333 Anzac and found several vials containing PCP.

Detective Owens searched the rear yard of the house and noticed a strong odor consistent with PCP emanating from a Honda that was parked there. Detective Owens opened the trunk and found several bottles that contained liquids that emitted an odor consistent with PCP. The bottles were later tested and found to contain PCP. Defendant told Detective Owens that he owned the Honda.

Defense Evidence

Wilson's father, George Wilson, lived at 10333 Anzac Avenue. Defendant did not live with him. A tan Honda had been at the house for a year and a half to two years. A woman had parked the Honda in his yard and left the key on his dresser. To the best of his knowledge, defendant had not removed the keys from the dresser. He had not seen defendant get into the Honda or drive it.

Defendant's mother lived at 10321 Anzac Avenue. Defendant and Wilson would sometimes play dominos together.

Defendant testified on his own behalf. He stated that he had received the Honda as a gift from a friend, never registered it, never had the keys to it and never drove it.

On October 12, 2007, defendant was playing dominoes with Wilson and Howlett. He never participated in drug sales.

DISCUSSION

Defendant contends that the trial court erred in denying his *Wheeler*² motion challenging the prosecutor's use of a peremptory challenge to dismiss Prospective Juror No. 8, a Black woman.³

During voir dire, Prospective Juror No. 8 stated that she was single, had no children, was a full time student majoring in art at Cal State Fullerton. She also indicated that this was her first time on a jury. The trial court asked the prosecutor to explain his reasons for dismissing the juror. The prosecutor stated that Prospective Juror No. 8 was young and did not appear to have "any life experience." The prosecutor added that Prospective Juror No. 8 was an art major and had been wearing "very large earrings."

A party may not use peremptory challenges to remove prospective jurors solely on the basis of group bias presumed from the jurors' membership in "an identifiable group distinguished on racial, religious, ethnic, or similar grounds." (*People v. Fuentes* (1991) 54 Cal.3d 707, 713.) Doing so violates the right to trial by an impartial jury under article I, section 16 of the California Constitution. (*People v. Box* (2000) 23 Cal.4th 1153, 1187; *People v. Wheeler, supra*, 22 Cal.3d at pp. 276-277.) It also violates the 14th Amendment to the United States Constitution's guarantee of equal protection of the laws. (*Powers v. Ohio* (1991) 499 U.S. 400, 402, 409 [111 S.Ct. 1364, 113 L.Ed.2d 411]; *Batson v. Kentucky* (1986) 476 U.S. 79, 89 [106 S.Ct. 1712, 90 L.Ed.2d 69].)

² *People v. Wheeler* (1978) 22 Cal.3d 258.

³ There was another juror who was subject of the *Wheeler* motion. The prosecutor explained that he had dismissed the prospective juror because he had mentioned that he was on a hung jury and had been "satisfied with the result." The prosecutor stated that he did not want a hung jury in this case. The defense also made two other *Wheeler* motions, both denied. Defendant does not challenge either ruling.

A party's use of peremptory challenges is presumed to be valid. (*People v. Williams* (1997) 16 Cal.4th 153, 187; *People v. Wheeler, supra*, 22 Cal.3d at p. 278.) Counsel may excuse potential jurors based on hunches or for arbitrary reasons, so long as they are unrelated to impermissible group bias. (*People v. Box, supra*, 23 Cal.4th at p. 1186, fn. 6; *People v. Turner* (1994) 8 Cal.4th 137, 165, disapproved on another ground in *People v. Griffin* (2004) 33 Cal.4th 536, 555, fn. 5.) Thus, the burden is on the complaining party to make a prima facie showing that the peremptory challenges have been exercised in violation of the Constitution. (*People v. Johnson* (1989) 47 Cal.3d 1194, 1216; see *People v. Crittenden* (1994) 9 Cal.4th 83, 115.)

The trial court found that Prospective Juror No. 8 was a member of a protected group and required an explanation from the prosecutor for the peremptory challenge. Where the trial court finds a prima facie case has been made and asks for an explanation for the exercise of peremptory challenges, it has a duty to determine the credibility of the proffered explanations. (*People v. Silva* (2001) 25 Cal.4th 345, 385.) On appeal, we determine whether substantial evidence supports the trial court's findings. (*People v. Bonilla* (2007) 41 Cal.4th 313, 341.) We also examine the record to make sure the trial court understood its obligation to scrutinize the explanation given for the exercise of peremptory challenges and made "a sincere and reasoned attempt to evaluate the . . . explanation in light of the circumstances of the case as then known" (*People v. Johnson, supra*, 47 Cal.3d at p. 1216; accord, *Silva, supra*, at p. 385.) We give deference to the trial court's finding that the opposing party has shown bona fide and neutral explanations for the exercise of the peremptory challenges rather than sham excuses. (*People v. Turner, supra*, 8 Cal.4th at p. 165; *People v. Fuentes, supra*, 54 Cal.3d at pp. 720-721.) Only if "the record as a whole shows purposeful discrimination," despite the neutral explanations given, will we reverse. (*Silva, supra*, at p. 384.)

Even assuming that the trial court impliedly found that defendant had made a prima facie case of unconstitutional exclusion of Prospective Juror No. 8 when the trial court said that the juror was in a group to be protected and asked for an explanation from

the prosecutor for excusing the prospective juror, defendant's claim of error is unfounded.

The prosecutor was able to articulate reasons for exercising peremptory challenges other than membership in a cognizable group (see, e.g., *People v. Arias* (1996) 13 Cal.4th 92, 134), reasons which the trial court accepted. While defendant may believe that the reasons given were simply a sham, the trial court was nonetheless willing to accept the reasons as legitimate, and its findings must be given great deference. (*People v. Montiel* (1993) 5 Cal.4th 877, 909.)

As explained by the prosecutor, Prospective Juror No. 8 did not have much "life experience" because she was a full-time student, was single and had no children.⁴ In addition, the prosecutor believed that she would not be an appropriate juror because she was an art major and was wearing large earrings. In *People v. Perez* (1994) 29 Cal.App.4th 1313, 1328-1329, the prosecutor's race-neutral dismissal of two jurors who were college students, had never served on a jury and had no children was supported due to "limited life experience." While it may be true, as defendant suggests, that many women, including Black women, wear long earrings, the appellate court in *People v. Ward* (2005) 36 Cal.4th 186, 202 determined that the prosecutor gave a valid, race-neutral explanation when a potential juror was dismissed due to the 30 silver chains around her neck and rings on every one of her fingers. The appellate court indicated that the prosecutor's stated reasons were sincere and genuine and entitled to great deference when the reason was based on the prospective juror's appearance and demeanor.

Defendant's reliance on *People v. Gonzales* (2008) 165 Cal.App.4th 620 is misplaced. In *Gonzales*, the prosecutor stated that he dismissed a prospective juror because he was young and had no children or spouse. While the appellate court found that "[y]outh and a corresponding lack of life experience can be a valid race-neutral basis

⁴ The record reflects that the prosecutor used a peremptory challenge to dismiss another potential juror who was a college student, was single, had no children, and had never served on a jury.

for a peremptory challenge,” the record did not support the prosecutor’s explanation. The juror had a job and never stated that he was “single or childless.” (*Id.* at pp. 631-632.) In the instant case, Prospective Juror No. 8 stated that she was a full-time student, was not married, had no children, had never been a victim or witness to a crime, and never served on a jury. In addition, one of the defense attorneys described Prospective Juror No. 8 as being young.

In summary, substantial evidence supports the trial court’s findings that the prosecutor’s explanation for the challenge was genuine and the juror was not excused for her membership in a cognizable group. (*People v. Jackson* (1992) 10 Cal.App.4th 13, 21.) Therefore, the trial court did not err in denying defendant’s *Wheeler* motion.

DISPOSITION

The judgment is affirmed.

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JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.